

JOSEPH W. COTCHETT (#36324)
STEVEN N. WILLIAMS (#175489)
COTCHETT, PITRE & McCARTHY, LLP
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
sWilliams@cpmlegal.com

Lead Counsel for the Direct Purchaser Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

TABLE OF CONTENTS

		<u>Page(s)</u>
2		
3	I. INTRODUCTION	1
4	II. STATEMENT OF FACTS	2
5	A. Background of the Settlements	2
6	B. Notice to Class Members Regarding Settlements.....	3
7	C. The Claims Process.....	4
8	D. Disputed Claims.....	7
9	E. Reserving Funds in the Net Settlement Fund	7
10	III. ARGUMENT	8
11	IV. CONCLUSION.....	10

TABLE OF AUTHORITIES

	<u>Page(s)</u>	
2		
3	<u>CASES</u>	
4	<i>Class Plaintiffs v. City of Seattle,</i> 955 F.2d 1268 (9 th Cir. 1992)	8
5		
6	<i>In re Computron Software, Inc.</i> 6 F. Supp. 2d 313 (D.N.J. 1998)	8, 9
7		
8	<i>In re Lloyd's Am. Trust Fund Litig.,</i> 2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002).....	8
9		
10	<i>In re Paine Webber Ltd. Partnerships Litig.,</i> 171 F.R.D. 104 (S.D.N.Y. 1997)	8
11		
12	<i>In re Vitamins Antitrust Litig.,</i> 2000 WL 1737867 (D.D.C. Mar. 31, 2000).....	8
13		
14	<u>OTHER AUTHORITIES</u>	
15	<i>Newberg on Class Actions</i> , § 11:33 (4 th ed. Nov. 2012).....	9

OTHER AUTHORITIES

Newberg on Class Actions, § 11:33 (4th ed. Nov. 2012). 9

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 14, 2013, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Claudia Wilken, United States District Judge, at the United States District Courthouse, 1301 Clay Street, Courtroom 2, 4th Floor, Oakland, California, 94612, Direct Purchaser Plaintiffs will move this Court for an Order authorizing the distribution of settlement proceeds obtained in the Direct Purchaser Actions to class members who submitted a valid claim.

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support thereof, the Declaration of Markham Sherwood in Support of Motion Authorizing Distribution of Settlement Fund, the Declaration of Steven N. Williams in Support of Direct Purchaser Plaintiffs' Motion for an Order Authorizing Distribution of Settlement Fund, the [Proposed] Order Granting Motion Authorizing Distribution of Settlement Fund, submitted herewith, as well as the complete files and records in this case.¹ This motion, and the papers filed in support, are being posted on the case website www.sramcase.com.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Direct Purchaser Plaintiffs (“Plaintiffs”) settled this action with all named defendants, resulting in settlement proceeds of \$76,872,476.99 plus accrued interest.² This Court has

¹ After Plaintiffs file this Motion, all documents including the Notice of Motion and Motion, the Memorandum of Points and Authorities in Support thereof, the Declaration of Markham Sherwood in Support of Motion Authorizing Distribution of Settlement Fund, the Declaration of Steve Williams in Support of Direct Purchaser Plaintiffs' Motion for an Order Authorizing Distribution of Settlement Fund, and the [Proposed] Order Granting Motion Authorizing Distribution of Settlement Fund will be posted on the SRAM website (<http://www.gilardi.com/sramcase>).

² The settling defendants include: Cypress Semiconductor Corporation, Etron Technology, Inc., Etron Technology America, Inc., Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Integrated Silicon Solutions, Inc., Micron Technology, Inc., Micron Semiconductor Products, Inc., NEC Electronics Corporation, NEC Electronics America, Inc., Renesas Technology Corp. (formerly known as Hitachi, Ltd. and Mitsubishi Electric Corporation), Renesas Technology America, Inc. (formerly known as Hitachi America, Ltd. and Mitsubishi Electric & Mitsubishi Electronics USA, Inc.), Samsung Electronics Company, Ltd., Samsung Semiconductor, Inc., Toshiba Corporation, and Toshiba America Electronic Components, Inc. (collectively, “Settling Defendants”).

1 granted final approval to each of the settlement agreements and the time for appeal has expired.
 2 All settlement payments have been made and placed in an interest-earning escrow account.
 3 Notice of the settlements was sent to class members, and potential class members submitted
 4 claims to the settlement proceeds. (Decl. of S. Williams in Support of Direct Purchaser
 5 Plaintiffs' Motion for an Order Authorizing Distribution of Settlement Fund ("Williams Decl."
 6 ¶3)).

7 The claims administrator has completed an extensive, fair and reasonable review of each
 8 submitted claim. As of January 28, 2013, the Net Settlement Fund, which includes the
 9 settlement proceeds plus interest through that date, less Court-ordered attorneys' fees, costs and
 10 expenses, and incentive benefits to the Class Representative, amounts to approximately
 11 \$50,402,242.73. ("Williams Decl." ¶ 4).

12 Plaintiffs recommend reserving sufficient funds in the Net Settlement Fund for the
 13 payment of federal and state taxes, and claims administration costs.

14 Pursuant to the settlement agreements, Plaintiffs request that the Court enter the
 15 Proposed Order, submitted herewith, which approves the *pro rata* distribution of the Net
 16 Settlement Fund, less funds reserved for taxes and claims administration costs, and authorizes
 17 payment of all claims approved by the Claims Administrator.

18 II. STATEMENT OF FACTS

19 A. Background of the Settlements

20 Plaintiffs brought this action alleging that from November 1, 1996 through December
 21 31, 2005, defendants unlawfully agreed to fix, raise, maintain and stabilize the prices of Static
 22 Random Access Memory ("SRAM") in violation of the federal antitrust laws by the following
 23 means: agreeing to set SRAM prices and directly coordinating SRAM pricing; directly
 24 exchanging recent and future SRAM prices; directly exchanging other "highly confidential"
 25 SRAM pricing and production plans; policing each other's SRAM pricing practices; and
 26 seeking to control the supply of SRAM. Plaintiffs further alleged that, as a result of defendants'
 27 unlawful conduct, they and members of the Certified Class paid more for SRAM than they
 28

would have in the absence of defendants' wrongful conduct. Defendants denied Plaintiffs' allegations and asserted numerous affirmative defenses. In exchange for the release of Plaintiffs' claims, nine separate settlement agreements were reached with Settling Defendants. The settlements total \$76,872,476.99. (Williams Decl. ¶ 5).

On July 2, 2010 and June 30, 2011, the Court issued orders granting final approval of the settlements, determining that each settlement was fair, adequate and reasonable, and dismissed the litigation with prejudice against the Settling Defendants.³ The Court also found that the notice given to the class regarding the settlements was the best notice practicable under the circumstances, and that such notice provided due and adequate notice of the proceedings and satisfied the requirements of due process. The judgments entered provided that the Court retains jurisdiction over disbursement of the settlement fund. (Williams Decl. ¶ 6).

B. Notice to Class Members Regarding Settlements

The Claims Administrator mailed and emailed notice to class members, and Lead Counsel for the case also created a settlement website, which contained the notice and claim form. (Williams Decl. ¶ 7). Notice occurred in two phases, based on the timing of the settlements. The first notice informed class members about Plaintiffs' settlements with Etron, Hynix, ISSI, Micron, NEC, Renesas and Toshiba. The second notice informed class members of Plaintiffs' settlements with Cypress and Samsung. Both of these notices informed class members that the plan of allocation provides for distribution of the Net Settlement Fund on a *pro rata* basis, based on the dollar amount each class member paid to defendants for direct

³ See Order Granting Final Approval of Plan of Allocation (July 2, 2010) (Dkt. No. 1021); Order Granting Final Approval of Settlement with Cypress and Samsung and Plan of Allocation (June 30, 2011) (Dkt. No. 1371); Final Judgment of Dismissal with Prejudice as to the Etron Defendants (July 2, 2010) (Dkt. No. 1028); Final Judgment of Dismissal with Prejudice as to the Hynix Defendants (July 2, 2010) (Dkt. No. 1027); Final Judgment of Dismissal with Prejudice as to the ISSI Defendant (July 2, 2010) Dkt. No. 1026); Final Judgment of Dismissal with Prejudice as to the Micron Defendants (July 2, 2010) (Dkt. No. 1025); Final Judgment of Dismissal with Prejudice as to the NEC Defendants (July 2, 2010) (Dkt. No. 1024); Final Judgment of Dismissal with Prejudice as to the Renesas-Hitachi-Mitsubishi Defendants (July 2, 2010) (Dkt No. 1023); Final Judgment of Dismissal with Prejudice as the Toshiba Defendants (July 2, 2010) (Dkt. No. 1029); Final Judgment of Dismissal with Prejudice as to the Cypress Defendant (June 30, 2011) (Dkt. No. 1373); and Final Judgment of Dismissal with Prejudice as to the Samsung Defendants (June 30, 2011) (Dkt. No. 1372) (collectively, "Final Approval Orders")

1 purchases of SRAM from November 1, 1996 through December 31, 2005. The deadline to
 2 submit a Proof of Claim was March 2, 2012. (Williams Decl. ¶ 8).

3 **C. The Claims Process**

4 On or before November 17, 2011, pursuant to the November 2, 2011 Order Approving
 5 Claim Form and Claim Period for Direct Purchaser Action (Dkt. No. 1416) (“November 2
 6 Order”), Gilardi mailed the Claim Form to 5,255 entities and electronically mailed a
 7 notification that Claim Forms were available (“e-mail notification”) to 491 entities. A copy of
 8 the e-mail notification is attached as **Exhibit A**. The claim form was also available on Gilardi’s
 9 company website, www.gilardi.com/sramcase. A copy of the Claim Form is attached as
 10 **Exhibit B**. (Decl. of Markham Sherwood in Support of Motion Authorizing Distribution of
 11 Settlement Fund (“Sherwood Decl.” ¶ 4)).

12 The Claims Administrator created and maintained a website
 13 (<http://www.gilardi.com/sramcase>) which made available the Settlement Agreements, Class
 14 Notices, Preliminary Approval Orders, Final Approval Orders and access to the Claim Form. In
 15 addition, claimants could file Claim Forms on-line at the website from November 23, 2011 until
 16 March 2, 2012. (Williams Decl. ¶ 9).

17 As a result of the mailings of the Notice of Pendency of Class Action and Partial Class
 18 Action Settlements, and during the normal course of the administration of the Settlements, the
 19 mailing list for the Claim Form changed as a result of the following:

- 20 a. Gilardi manipulated the data to ensure adequate formatting and to remove
 duplicate name and address records;
- 21 b. Gilardi submitted the names and physical addresses to the United States Postal
 Service (“USPS”) National Change of Address Service (“NCOA”) to ensure
 adequate physical address formatting, obtain current physical addresses and
 qualify for postal discounts;
- 22 c. Gilardi updated Claimants’ addresses pursuant to their written requests;

- 1 d. Gilardi updated Claimants' addresses as a result of receiving forwarding
 2 addresses from the USPS or addresses found through a trace processing service;
 3 e. Gilardi added Claimants and their addresses, per their request for previous
 4 Notices; and
 5 f. Gilardi removed Claimants' names from the mailing list due to failure to obtain a
 6 deliverable address during the administration of the settlements and failure to
 7 receive a deliverable address prior to the Claim Form mailing in the current
 8 action.

9 Of the 491 e-mail notifications sent, 158 e-mails were returned as undeliverable. Where
 10 physical addresses were available, Gilardi mailed Claim Forms by standard first-class mail,
 11 postage pre-paid, to these records. ("Sherwood Decl." ¶ 6). Additional Claim Forms were
 12 mailed by standard first-class mail, postage prepaid, to 7 entities, at their request. The USPS
 13 returned 22 Claim Forms as undeliverable with a forwarding address, and Gilardi re-mailed
 14 Claim Forms to all forwarding addresses provided. ("Sherwood Decl." ¶ 6-7).

15 The United States Postal Service ("USPS") returned 1,670 Claim Forms as
 16 undeliverable without forwarding addresses. Gilardi used a trace processing service to obtain
 17 updated addresses for Claim Forms returned as undeliverable and received 192 updated
 18 addresses. Gilardi subsequently re-mailed Claim Forms to these updated addresses. ("Sherwood
 19 Decl." ¶ 8).

20 On or before November 17, 2011, Gilardi established a toll-free number (866-252-
 21 7551) and dedicated a Post Office Box to respond to inquiries and communications from
 22 Claimants. ("Sherwood Decl." ¶ 9).

23 Notice of the plan of distribution was provided to class members, and no objections to
 24 this plan were received. (Williams Decl. ¶ 10). The claim form was designed so that class
 25 members could easily provide the required information. Pursuant to the November 2 Order,
 26 class members had at least ninety (90) days to file a Claim Form. The Claim Form filing
 27 deadline was March 2, 2012. (Williams Decl. ¶ 11).

1 Gilardi received and processed 236 Claim Forms. For quality control purposes, each
 2 paper and on-line Claim Form submitted was given a unique claim number and entered into
 3 Gilardi's proprietary database. ("Sherwood Decl." ¶ 10).

4 From March 3, 2012 through January 7, 2013, Gilardi reviewed each submitted Claim
 5 Form to determine whether it was valid and included all required information. ("Sherwood
 6 Decl." ¶ 11).

7 Of the 236 claims received, Gilardi identified 28 duplicate claims, and 12 claims were
 8 withdrawn by Class Members, leaving 196 unique remaining claims. Of these, Gilardi
 9 determined that certain Claim Forms were missing information that was necessary to confirm
 10 the validity of the claim or a Claimant's *pro rata* share. ("Sherwood Decl." ¶ 12).

11 Of the unique remaining claims, 10 Claim Forms did not contain purchase information,
 12 107 Claim Forms either did not appear in the sales data provided by the Defendants
 13 ("Defendant Records") or indicated purchase totals in excess of the amounts demonstrated in
 14 Defendant Records, and 65 Claim Forms fell into both of the above categories (for a total of 182
 15 deficient claims). ("Sherwood Decl." ¶ 13).

16 On September 25, 2012, Gilardi mailed a Notice of Deficient Claim, Request for
 17 Documentation, or Notice of Deficient Claim and Request for Documentation (collectively the
 18 "Audit Letters") to these Claimants, advising the Claimants that unless the indicated deficiency
 19 was corrected or requested documentation was provided within fourteen (14) days, his or her
 20 filing of a Claim Form may be denied. Examples of the Audit Letters are attached as **Exhibit**
 21 **C.** To protect the privacy of the Claimants, their personal information has been redacted.
 22 ("Sherwood Decl." ¶ 14).

23 Gilardi reviewed documentation supplied by Claimants in response to the Audit Letters,
 24 which was comprised of documentation in the form of invoices, payment confirmations,
 25 purchase orders, spreadsheets, and other such documentation. ("Sherwood Decl." ¶ 15).

26 Ultimately, as a result of Gilardi's document review, 38 claims were approved at or
 27 above the amount submitted on their Claim Form; 25 claims were approved at reduced amounts
 28

1 for a variety of reasons including but not limited to: inclusion of foreign purchases, purchases
 2 outside the Class Period, purchases made from a company other than a defendant, or purchases
 3 that were not SRAM; 8 claims were denied for a variety of reasons including but not limited to:
 4 late submission, lack of available records, inclusion of foreign purchases, purchases made from
 5 a company other than a defendant, or purchases that were not SRAM; and 125 claims were
 6 denied as they provided no response to the Audit Letters. Where possible, Gilardi followed up
 7 with these 125 claimants via email one time. (“Sherwood Decl.” ¶ 16).

8 In sum, after the completion of audits, document review, and communications with
 9 potential Class Members, 63 claims were approved in their entirety or at reduced amounts. A
 10 total of 133 claims are being recommended for denial. A list of claims recommended for denial
 11 is attached as **Exhibit D**. To protect the privacy of these Claimants, their names have been
 12 redacted. (“Sherwood Decl.” ¶ 17).

13 After the completion of processing and auditing claims, there are 63 Claimants
 14 recommended for approval (the “Authorized Claimants”). A list of the Authorized Claimants
 15 and their percentages of the Net Settlement Fund are attached as **Exhibit E**. To protect the
 16 privacy of the Authorized Claimants, their names have been redacted. (“Sherwood Decl.” ¶ 18).

17 **D. Disputed Claims**

18 There are no disputed claims.

19 **E. Reserving Funds in the Net Settlement Fund**

20 As of January 28, 2013, approximately \$50,402,242.73 remains in the Net Settlement Fund,
 21 which includes the settlement proceeds plus interest through that date, less Court-ordered
 22 attorneys’ fees, costs and expenses, and incentive benefits to Class Representatives. (Williams
 23 Decl. ¶ 12). Plaintiffs recommend reserving sufficient funds in the Net Settlement Fund for
 24 payment of state and federal taxes as they become due during the claims distribution period. In
 25 addition, the Claims Administrator submitted a budget showing that approximately \$40,000.00
 26 should be reserved in the Net Settlement Fund for claims administration costs incurred, and for
 27 future claims administration costs, which include distributing, processing and tracing settlement
 28

1 award checks, website updates and fees, communications with claimants, and FDIC charges.
 2 (Williams Decl. ¶ 13). Thus, Plaintiffs recommend distributing the Net Settlement Fund, less
 3 funds reserved for the payment of taxes, and claims administration costs.

4 III. ARGUMENT

5 Plaintiffs request an order authorizing distribution of the Net Settlement Fund to the
 6 approved valid claimants in the amount set forth in Exhibit E of the Sherwood Declaration. The
 7 Court has already approved a *pro rata* distribution (Dkt. Nos. 1021 and 1371). A *pro rata*
 8 distribution is determined by multiplying each claimants' percentage of the total valid claims
 9 (individual valid claimant purchases divided by total valid claims) times the Net Settlement
 10 Fund (approximately \$50 million). This calculates each claimant's individual payment from the
 11 Net Settlement Fund. Attached as Exhibit E to the Sherwood Declaration is a spreadsheet of
 12 each valid claimant's *pro rata* percentage of the Net Settlement Fund.

13 Like final approval of a settlement agreement, a plan of allocation must be "fair,
 14 adequate and reasonable" to warrant court approval. *See In re Computron Software, Inc.* 6 F.
 15 Supp. 2d 313, 321 (D.N.J. 1998); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
 16 1284-85 (9th Cir. 1992). A plan of allocation, like the one proposed here, that compensates class
 17 members based on the type and extent of their injuries is generally considered to be reasonable.
Computron Software, Inc. 6 F. Supp.2d at 321.

19 Courts have repeatedly found that *pro rata* distributions are "fair, adequate and
 20 reasonable." *See e.g., In re Vitamins Antitrust Litig.*, 2000 WL 1737867 at *6 (D.D.C. Mar. 31,
 21 2000) ("Settlement distributions, such as this one, that apportion funds according to the relative
 22 amount of damages suffered by class members, have repeatedly been deemed fair and
 23 reasonable."); *In re Lloyd's Am. Trust Fund Litig.*, 2002 WL 31663577 at *19 (S.D.N.Y. Nov.
 24 26, 2002) ("*pro rata* allocations provided in the Stipulation are not only reasonable and rational,
 25 but appear to be the fairest method of allocating the settlement benefits."); *In re Paine Webber
 26 Ltd. Partnerships Litig.*, 171 F.R.D. 104, 135 (S.D.N.Y. 1997) ("*pro rata* distribution of the
 27 Settlement on the basis of Recognized Loss will provide a straightforward and equitable nexus
 28

1 for allocation and will avoid a costly, speculative and bootless comparison of the merits of the
 2 Class Members' claims").

3 Distribution of the Net Settlement Fund, as set forth in Exhibit E of the Sherwood
 4 Declaration is fair, adequate and reasonable. The plan of distribution provides for a straight *pro*
 5 *rata* distribution to class members with valid claims (with no class members being favored over
 6 others). Like allocation plans previously adopted by courts, this plan compensates class
 7 members based on the extent of their injuries. *See Computron Software, Inc.*, 6 F.Supp.2d at
 8 321. Notice of this plan of distribution was provided to class members, and no objections to
 9 this plan were received. (Williams Decl. ¶ 10). Distribution of the Net Settlement Fund is
 10 appropriate at this time because final judgment has been entered and the time to appeal the
 11 settlement agreements has expired. *See Newberg on Class Actions*, § 11:33 (4th ed. Nov. 2012)
 12 ("settlement fund is usually not distributed until final judgment has been entered and the appeal
 13 period has expired").

14 In addition, the proposed distribution is appropriate because the Claims Administrator
 15 has completed a fair, reasonable, and adequate review of the claims. First, the Claims
 16 Administrator established quality control measures to ensure that each claim was properly
 17 tracked and notified claimants of any deficiencies, including incomplete claim forms, duplicate
 18 claims, unsupported claim amounts, and claims that did not satisfy the class definition. If
 19 emails, claim forms, or deficiency letters were returned as undeliverable, the Claims
 20 Administrator attempted to obtain updated addresses and re-mailed the letters where possible.

21 Second, claimants had every opportunity to cure any deficiencies by providing
 22 additional information or documentation. The Claims Administrator processed late claims and,
 23 if in appropriate circumstances and after consultation with counsel, extended the deadline to
 24 submit supporting documentation. Additionally, where possible, the Claims Administrator used
 25 data provided by Class Counsel and Settling Defendants if a claimant could not locate
 26 supporting documentation regarding purchases.

1 Third, the Claims Administrator and Class Counsel spent a significant amount of time
 2 working with claimants and/or their counsel to resolve claim disputes.

3 Finally, the claims process resulted in significant savings to the Class. After the
 4 completion of audits, document review, communications with claimants, and processing late
 5 claims, the Claims Administrator determined that \$3,830,544,766.01 of claims were not
 6 eligible.

7 In sum, distributing the Net Settlement Fund on a *pro rata* basis to all approved
 8 claimants is fair, reasonable, and adequate.

9 **IV. CONCLUSION**

10 For the foregoing reasons, Direct Purchaser Plaintiffs respectfully request an Order
 11 authorizing the distribution of the Net Settlement Fund as set forth in Exhibit E of the Sherwood
 12 Declaration.

14 Dated: January 31, 2013

COTCHETT, PITRE & McCARTHY, LLP

15 By /s/ Steven N. Williams

17 JOSEPH W. COTCHETT (#36324)
 STEVEN N. WILLIAMS (#175489)
COTCHETT, PITRE & McCARTHY, LLP
 San Francisco Airport Office Center
 18 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 19 Telephone: (650) 697-6000
 Facsimile: (650) 697-0577
 jcotchett@cpmlegal.com
 21 swilliams@cpmlegal.com

22 *Lead Counsel for the Direct Purchaser class*